BILLS AND NOTES — DEFENSES — NEGLIGENCE OF THE DRAWER OF A CHECK AS A DEFENSE TO THE DRAWEE BANK. — The president of a corporation left checks, blank except for his signature, with the manager to be used during his absence as the necessities of business demanded. Two of the checks, which were carelessly left exposed, were taken by a business caller and cashed by the drawee bank. The first check exhausted the corporation's deposit, but the bank cashed the second, notwithstanding, and reimbursed itself from a subsequent deposit. The corporation now sues to recover its deposits. *Held*, that it may not recover either. *S. S. Allen Grocery Co.* v. *Bank of Buchanan County*, 182 S. W. 777 (Kansas City Court of Appeals).

In general, no liability exists on an incomplete instrument which was not delivered. Nor does the passing of an instrument from one officer of a corporate maker to another constitute delivery, since the instrument then never leaves the possession of the corporation. But because a bank is bound to pay the checks of its depositors, it is generally held that a depositor is under a duty of care not to impose liability on the bank through incomplete instruments. See *Scholfield* v. *Earl of Londebourgh*, [1896] A. C. 514, 538; *Linick* v. *Nutting & Co.*, 140 App. Div. 265, 267, 125 N. Y. Supp. 93, 96. *Contra, Greenfield Savings Bank* v. *Stowell*, 123 Mass. 196, 201; *Marshall* v. *Colonial Bank*, [1906] A. C. 559. See Beven, "Young *v.* Grote," 23 LAW QUART. REV. 390. The same duty exists in the civil law. See 4 POTHIER, CONTRAT DE CHANGE, ed. Beignet, 516. A violation of this duty is stated by some courts to support a liability in tort. See *Kepitigalla Rubber Estates* v. *National Bank of India*, [1909] 2 K. B. 1010. In others, it is treated as estopping the depositor from denying the validity of the instrument. *Trust Co. America* v. *Conklin*, 65 Misc. 1, 119 N. Y. Supp. 367; *cf.* 23 HARV. L. REV. 306. And the leaving of incomplete checks in an exposed place, as in the principal case, has been held sufficient negligence to bar a recovery from the bank. *Snodgrass* v. *Sweetser*, 15 Ind. App. 682. See 2 BOLLES, LAW OF BANKING, 589. As to the overdraft, however, it seems that the plaintiff should recover, for the duty of care is ended since the bank is no longer under an obligation to pay. *Troike* v. *Cook, etc. Bank*, 127 Ill. App. 413; *Henderson* v. *U. S. National Bank*, 59 Neb. 280, 80 N. W. 898. However, if it was customary for the bank to cash the overdrafts of a depositor, it is arguable that the existence of this custom should impose on the depositor the same obligations as when the bank pays his checks under a legal duty.

CHAMPERTY AND MAINTENANCE — CONTRACT FOR PROPORTIONATE CONTINGENT FEE — RECOVERY ON *QUANTUM MERUIT*. — The plaintiff, an attorney, contracted to bring a suit for the defendant for which his compensation was to be a percentage of the amount recovered. The suit was compromised while pending. The plaintiff now sues for compensation. *Held*, that he may recover on a *quantum meruit* for the services rendered. *City of Rochester* v. *Campbell*, 111 N. E. 420 (Ind.).

In most American jurisdictions, although not in Indiana, a provision for a contingent fee does not make a contract void for champerty. See WILLISTON'S WALD'S POLLOCK ON CONTRACTS, 3 ed., 451, note; *Scobey* v. *Ross*, 13 Ind. 117. And even in jurisdictions where such a contract is held void, recovery in quasi-contract for the services rendered has often been allowed. *Holloway* v. *Lowe*, 1 Ala. 246; *Husbands* v. *Cook*, 24 Ky. L. Rep. 1320, 71 S. W. 508; *French* v. *Cunningham*, 149 Ind. 632, 49 N. E. 797; *cf. Rust* v. *Larue*, 4 Litt. (Ky.) 411. Whether champerty should avoid a contract is a disputable question of public policy. But clearly a jurisdiction which has gone on record against champerty can find no justification in allowing a *quantum meruit*. This anomalous recovery has sometimes been based upon a distinction drawn between services illegal in themselves and services, otherwise lawful, that are to be compensated for in an illegal way. *Cf. Gammons* v. *Johnson*, 69 Minn. 488, 72 N. W. 563, with *Gam-*

*mons* v. *Johnson*, 76 Minn. 76, 78 N. W. 1035. However, with champertous contracts it is not the mere payment of money, but rather the performance of services with such contingent compensation in view which is of doubtful policy. Further, to allow such recovery in quasi-contract would tend to encourage the formation of champertous contracts, as the attorney then has nothing to lose and everything to gain. See *Roller* v. *Murray*, 112 Va. 780, 787, 72 S. E. 665, 687. Wherefore the jurisdictions which strongly disapprove of champerty have refused recovery in *quantum meruit* as well as on the contract. *Butler* v. *Legro*, 62 N. H. 350; *Mazureau* v. *Morgan*, 25 La. Ann. 281; *Ackert* v. *Barker*, 131 Mass. 436. See KEENER, QUASI-CONTRACTS, 262; Brooks, "Champerty and Maintenance in the United States," 3 VA. L. REV. 421, 422.

CONFLICT OF LAWS — JURISDICTION OVER TORTS TO FOREIGN REALTY — WHETHER STATUTE CONFERRING JURISDICTION IS RETROACTIVE. — The plaintiff brought suit in New York for the burning of his mill in Kansas in 1882. At the time of the alleged injury, no action could be brought in New York for an injury to foreign realty; but a statute passed in 1913 permitted such a suit. (NEW YORK CODE OF CIVIL PROCEDURE, § 982 *a*.) The defendant demurred to the complaint, on the ground that the statute should not be construed as retroactive, since it created a new substantive right. *Held*, that the demurrer be sustained. *Jacobus* v. *Colgate*, 54 N. Y. L. J. 2033 (Ct. of App. N. Y.)

It is a generally accepted rule of the conflict of laws that a right created by the appropriate law exists as a fact and will be recognized everywhere. See *King* v. *Sarria*, 69 N. Y. 24, 31. See DICEY, CONFLICT OF LAWS, 2 ed., 23. But any state may refuse to give a right of access to its courts, and so refuse to enforce the recognized right. See DICEY, CONFLICT OF LAWS, 2 ed., 31. Before the statute, New York followed the anomalous common law rule and refused to enforce such rights when growing out of injuries to foreign realty. *Brisbane* v. *Pennsylvania R. Co.*, 205 N. Y. 431, 98 N. E. 752; *Dodge* v. *Colby*, 108 N. Y. 445, 15 N. E. 703. But, nevertheless, the courts of that state have recognized the existence of the plaintiff's right. *Sentenis* v. *Ladew*, 140 N. Y. 463, 35 N. E. 650. And there is no doubt that a right may exist without a remedy. For example, when a plaintiff under certain disabilities is not permitted to come into court, he may sue if the disability is removed by consent, or by legislative action, although his substantive rights remain unchanged. *Bennett* v. *Bennett*, 116 N. Y. 584, 23 N. E. 17; *Sims* v. *Sims*, 79 N. J. L. 577, 76 Atl. 1063; *Burdick* v. *Freeman*, 120 N. Y. 420, 24 N. E. 949; *cf. Gardner* v. *Thomas*, 14 Johns. (N. Y.) 134. Accordingly, the statute in the principal case did not create a new right of redress, but gave a remedy for a right already existing, though previously unenforceable. The general rule is that statutes operate prospectively only, unless a contrary intention clearly appears. *Sherrill* v. *Christ Church*, 121 N. Y. 701, 25 N. E. 50. See 2 LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, 2 ed., 642. But a statute which deals only with procedure, even though it supplies a remedy for a hitherto unenforceable right, or substitutes or adds a new remedy, applies *primâ facie* to actions on accrued as well as on future rights. *Fisher* v. *Hervey*, 6 Colo. 16; *Robinson* v. *Ferguson*, 119 Iowa 325, 93 N. W. 350; *Richardson* v. *Fletcher*, 74 Vt. 417, 424, 52 Atl. 1064, 1067. See 2 LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, 2 ed., § 674. Thus the reasoning of the court in the principal case seems opposed to the theory of the conflict of laws and to the general rules of statutory construction. But it is possible that the particular circumstances surrounding this statute justified the court's interpretation of the legislative intent.

CONSTITUTIONAL LAW — OBLIGATION OF CONTRACTS — VALIDITY OF STATUTE RESERVING POWER TO ALTER CONTRACTUAL RIGHTS THROUGH REPEAL OF LEGISLATION. A creditor filed a bill to enforce the statutory liability of